

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

This morning the parties appeared on a variety of discovery issues presented in Plaintiffs' April 26, 2011 letter to the court (Docket No. 305). After reviewing both Plaintiffs' letter and a responsive letter filed by Defendant Allstate Indemnity Company ("Allstate") (Docket No. 304), and in light of the arguments presented at this morning's hearing, the court **HEREBY ORDERS:**

1. Plaintiffs' request for further explanatory information allowing use of data, pursuant to its Document Request No. 3, is DENIED. Plaintiffs have failed to establish why the court should not accept Allstate's representation that it has no such information in its possession, custody or control. As the court has previously explained, as the party seeking production, the burden of proof in any dispute regarding control of third-party documents falls squarely on Plaintiffs. *See* Docket No. 295 at 4. The court further reiterates its suggestion made many weeks ago that Plaintiffs pursue such information by way of a subpoena to Audatex.

1 2. Plaintiffs' request for data distinguishing OEM and non-OEM parts is GRANTED as  
2 follows. No later than May 13, 2011, Allstate shall supplement the report bearing the Bates  
3 number ALLSTATE 0007982 by identifying, for each line item entry, the PART\_CNT and  
4 TOTAL\_PRICE\_AMT figures by aftermarket, OEM, non-OEM, and recycled parts. The court  
5 notes that at the hearing Plaintiffs withdrew their request for data distinguishing crash and non-  
6 crash parts.

7 3. Plaintiffs' request for replacement files for various corrupted or truncated data files  
8 produced by Allstate is GRANTED. Based on the representation of counsel, the court  
9 understands that such replacement files have already been produced. To the extent that any  
10 replacement files have not been produced, Allstate shall produce them no later than May 13,  
11 2011.

12 4. Plaintiff's request for individual data requested pursuant to its Document Request No.  
13 1(a) and 1(b), and aggregate data for various risk factors pursuant to its Document Request No.  
14 1(c) is DENIED. At the hearing, and without first presenting the proposal to Allstate during the  
15 mandatory meet-and-confer ordered by the court, Plaintiffs presented an alternative proposal for  
16 satisfying Plaintiffs' request. Under this proposal, Allstate would produce data from the three-  
17 year period previously ordered by the court that is aggregated by year, make, and model together  
18 with a tally of the number of insured in each of Allstate's rating categories. Because Allstate and  
19 the court had no advance notice of this proposal, the parties are to meet and confer on this no  
20 later than May 6, 2011. To the extent Allstate may secure such data from Audatex, or any  
21 further alternative the parties can agree to, it shall do so no later than May 13, 2011. If Allstate  
22 is not able to provide such data, by May 13, 2011, it shall file a sworn declaration detailing its  
23 inability to produce the data.

24 IT IS SO ORDERED.

25 Dated: April 29, 2011

*Paul S. Grewal*

26  
27 PAUL S. GREWAL  
28 United States Magistrate Judge